

No. 18245

In the

United States Court of Appeals

For the Ninth Circuit

ANGUS J. DEPINTO, HJALMAR B. LANDOE,
FRANCIS I. SABO and EDWIN B. PEGRAM,
ELMER W. DUHAME,

Appellants,

vs.

PROVIDENT SECURITY LIFE INSURANCE COM-
PANY, and JOHN S. GORSUCH and ALBERT
J. DOIG,

Appellees.

Petition of Elmer W. Duhame for Rehearing

O'CONNOR, ANDERSON, WESTOVER,
KILLINGSWORTH & BESHEARS
and
JOHN P. OTTO

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Elmer W. Duhame*

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COMES NOW the Appellant ELMER W. DUHAME and respectfully petitions for a rehearing in the above entitled cause as to the issue of the reinstatement of the jury verdict only, upon the following grounds:

I.

That in the absence of a motion for a new trial by the plaintiff-appellee, the granting of a judgment N.O.V. does not have the effect of granting a new trial and such failure results in the loss of jurisdiction to grant a new trial.

II.

The issue of the inadequacy of the damages as to those defendants found guilty of a breach of their fiduciary capacity is not applicable to the defendant Duhamé as he was exculpated from any liability or breach of fiduciary capacity or negligence by the verdict of the jury which should be reinstated as to the defendant Duhamé.

III.

That in the interest of justice, in the event this cause is remanded to the United States District Court for the District of Arizona for a new trial, further proceedings herein shall be heard by a judge, other than the Honorable George H. Boldt, to be designated by the Chief Judge of this Circuit pursuant to Section 292(b), Title 28, U.S.C.

Respectfully submitted,

O'CONNOR, ANDERSON, WESTOVER,
KILLINGSWORTH & BESHEARS
and
JOHN P. OTTO

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CERTIFICATE

I hereby certify that the Petition for Rehearing in my judgment is well founded and that it is not interposed for the purpose of delay.

O'CONNOR, ANDERSON, WESTOVER,
KILLINGSWORTH & BESHEARS
and
JOHN P. OTTO

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